

II. REMARKS

Claims 16, 32, 37 and 55 have been previously withdrawn for pertaining to a non-elected invention. With respect to claims 37 and 55, which respectively depend upon independent claims 33 and 51, Applicants contend that when independent claims 33 and 51 are allowed then dependent claims 37 and 55 must be rejoined with the allowed claims in accordance with MPEP § 821.04. Claims 1-15, 17-31, 33-36, 38-49, 51-54 and 56-77 have been examined on the merits.

The claims have not been amended by the present paper.

The Examiner now asserts another restriction/election requirement under 35 U.S.C. § 121 against the claims of the above-captioned application as follows:

Group I: Claims 1-15, 17-31, 33-36, 38-49, 51-54 and 71-77, drawn to a system for delivering streaming multi-media content over the Internet, classified in class 709, subclass 231 or 709/203;

Group II: Claim 67, drawn to a system for distributing a website specification, classified in class 715, subclass 202; and

Group III: Claims 69 and 70, drawn to a method for optimizing the distribution of at least one of information and information services over a computer network, classified in class 709, subclass 226.

The Examiner contends that the inventions I, II and III are distinct from each other and related as subcombinations as usable together in a single combination. The Examiner contends that the subcombinations are distinct if they are shown to be separately useable. The Examiner

contends that the invention of Group II has separate utility such as a system for distributing a website specification. The Examiner further contends that the invention of Group III has a separate utility such as a method for optimizing the distribution of at least one of information and information services over a computer network. The Examiner argues that the inventions of Groups I, II and III would require different searches so that restriction is proper.

As an initial matter, Applicants object to the fact that the Examiner's Groups I, II and III fail to account for all of the presently pending (and not previously withdrawn) claims.

Applicants contend that the following Groupings of the claims is complete:

Group I: Claims 1-15, 17-31, 33-36, 38-49, 51-54, 56-66, 68 and 71-77, drawn to a system for delivering streaming multi-media content over the Internet, classified in class 709, subclass 231 or 709/203;

Group II: Claim 67, drawn to a system for distributing a website specification, classified in class 715, subclass 202; and

Group III: Claims 69 and 70, drawn to a method for optimizing the distribution of at least one of information and information services over a computer network, classified in class 709, subclass 226.

Applicants elect Group I, claims 1-15, 17-31, 33-36, 38-49, 51-54, 56-66, 68 and 71-77, for further prosecution on the merits. Applicants' election is made with traverse.

In this case, there have been three previous Office Actions on the merits (i.e., September 13, 2006, March 30, 2007, and January 15, 2008), an equal number of responses filed by the Applicants, and at least one Request for Continued Examination (RCE). Applicants have

responded in full to the Examiner's Office Action of January 15, 2008, and Applicants have even submitted expert testimony to rebut erroneous assertions of fact that the Examiner has made. In view of the above, Applicants contend that their response of July 15, 2008 should be fully considered by the Examiner.

In view of the above, Applicants contend that Applicants have claimed a reasonable number of species of the invention, and that the Examiner has not shown that examination of the presently pending reasonable number of species of the invention would be undue.


For all of the above reasons, the Examiner's restriction requirement is improper and should be withdrawn.

For all of the reasons set forth in Amendment (E), filed July 15, 2008, claims 1-15, 17-31, 33-36, 38-49, 51-54 and 56-77 are in condition for allowance and a prompt notice of allowance is earnestly solicited.

Questions are welcomed by the below-signed attorney for Applicants.

Respectfully submitted,

GRIFFIN & SZIPL, PC



Joerg-Uwe Szimpl
Reg. No. 31,799

GRIFFIN & SZIPL, PC
Suite PH-1
2300 Ninth Street, South
Arlington, VA 22204
Telephone: (703) 979-5700
Facsimile: (703) 979-7429
Email: GANDS@szimpl.com
Customer No.: 24203